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11 *Attorneys for Plaintiff,*

12 *U.S. Bank National Association, as trustee, in trust for registered holders of First Franklin*
13 *Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FF1*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 U.S. BANK, NATIONAL ASSOCIATION,
12 AS TRUSTEE FOR THE FIRST FRANKLIN
13 MORTGAGE LOAN TRUST, MORTGAGE
14 ASSET-BACKED CERTIFICATES, SERIES
2007-FF1,

15 Plaintiff,

16 vs.

17 SFR INVESTMENTS POOL 1, LLC, a Nevada
18 Limited Liability Company; D'ANDREA
19 COMMUNITY ASSOCIATION, a Domestic
20 Non-profit Corporation; ALESSI & KOENIG,
21 LLC, a Domestic Limited Liability Company;
22 SIENA HOMEOWNERS ASSOCIATION, a
23 Domestic Non-Profit Corporation; THE
24 CLARKSON LAW GROUP, P.C.; a Nevada
Professional Corporation,

Defendants.

Case No.:

**U.S. BANK, N.A.'S COMPLAINT FOR
QUIET TITLE, WRONGFUL
FORECLOSURE, AND DECLARATORY
RELIEF**

25 COMES NOW Plaintiff, U.S. Bank National Association, as trustee, in trust for
26 registered holders of First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed
27 Certificates, Series 2007-FF1 (hereinafter "U.S. Bank" or "Plaintiff"), by and through its
28

1 attorneys of record, Dana Jonathon Nitz, Esq. and Natalie C. Lehman, Esq., of the law firm of
2 Wright, Finlay & Zak, LLP, and hereby files this civil action against the Defendants.

3 INTRODUCTION

4 1. This action is within the jurisdictional limits of this Court and this Venue is
5 appropriate because the Property involved is located within the jurisdiction of this Court.
6 Plaintiff is also authorized to bring this action in the State of Nevada by NRS 40.430.

7 2. The real property which is the subject of this civil action consists of a residence
8 commonly known as 2546 Napoli Drive, Sparks, Nevada 89434, APN 402-283-13 (hereinafter
9 "Property").

10 JURISDICTION AND VENUE

11 3. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
12 1332, as all Plaintiff are "citizens of different States" from all defendants and the amount in
13 controversy exceeds \$75,000, exclusive of interest and costs.

14 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1)-(2)
15 because Defendants reside in this district; a substantial part of the events or omissions giving rise
16 to Plaintiff's claims occurred in this district; and the property that is the subject of this action is
17 situated in this district, in Sparks, Washoe County, Nevada.

18 PARTIES

19 5. Plaintiff is a U.S. Bank is a national banking association chartered under the laws
20 of the United States with its principal place of business in Ohio, and authorized to do business in
21 the State of Nevada. "[A]ll national banking associations shall, for the purposes of ... actions by
22 or against them, be deemed citizens of the States in which they are respectively located." 28
23 U.S.C. §1348. For diversity jurisdiction purposes, a national bank is located solely in the state
24 designated as its main office (and not in every state where it has branch offices). *Wachovia Bank*
25 *v. Schmidt*, 546 U.S. 303, 308-319 (2006). US Bank's main office is located in the State of Ohio.
26 As such, US Bank is a citizen of Ohio for purposes of diversity of citizenship jurisdiction.

27 6. Plaintiff is now and at all times relevant, for the purposes of seeking declaratory
28 relief and quiet title as the assigned Beneficiary under a Promissory Note and Deed of Trust

1 signed by Troy Rheame, a single man as his sole and separate property and Troy T. Owen, as a
2 single man as his sole and separate property, as joint tenants (hereinafter, and collectively
3 “Rheame”), and recorded on November 30, 2006, (hereinafter “Rheame Deed of Trust”),
4 which is secured by the Property.

5 7. Upon information and belief, Defendant, SFR Investments Pool 1, LLC
6 (hereinafter “SFR”), is a domestic limited liability company, licensed to do business in the State
7 of Nevada, and claims to be the current titleholder of the Property.

8 8. Upon information and belief, the Defendant, D’Andrea Homeowners Association
9 (hereinafter the “D’Andrea HOA”), is a domestic non-profit co-op corporation, licensed to do
10 business in the State of Nevada.

11 9. Upon information and belief, Defendant, Alessi & Koenig, LLC (hereinafter
12 “Alessi”), is a domestic limited liability company, licensed to do business in the State of Nevada,
13 and was the HOA Trustee for D’Andrea HOA at the foreclosure sale of the Property.

14 10. Upon information and belief, the Defendant, Siena Homeowners Association
15 (hereinafter the “Siena HOA”), is a domestic non-profit co-op corporation, licensed to do
16 business in the State of Nevada.

17 11. Upon information and belief, The Clarkson Law Group, LLC (hereinafter
18 “Clarkson”), is a Nevada professional corporation doing business in the State of Nevada and is
19 the HOA Trustee for Siena HOA.

20 12. Upon information and belief, Alessi is the agent of D’Andrea HOA, and the HOA
21 is responsible for their acts and omissions under the doctrine of respondeat superior.

22 13. Upon information and belief, Clarkson is the agent of Siena HOA, and the HOA
23 is responsible for their acts and omissions under the doctrine of respondeat superior.

24 **FACTUAL BACKGROUND**

25 14. On or about November 30, 2006, Rheame purchased the Property.¹

26
27 ¹ A true and correct copy of the Grant Bargain Sale Deed recorded in the Washoe County
28 Recorder’s Office as Book and Instrument Number 3469201 is attached to Plaintiff’s Complaint
as **Exhibit 1**. All other recordings stated hereafter are recorded in the same manner.

1 **15.** The Deed of Trust executed by Rheaume identified First Franklin, a division of
 2 National City Bank as the Lender, Mortgage Electronic Registration Systems, Inc. (MERS),
 3 solely as nominee for Lender, as the beneficiary, Western Title as the Trustee, and secured an
 4 amount of \$236,000.00.²

5 **16.** On February 2, 2009, MERS assigned all of its right, title and interest in the Deed
 6 of Trust to LaSalle Bank National Association, as Trustee for First Franklin Mortgage Loan
 7 Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FF1.³

8 **17.** On December 14, 2010, Bank of America, N.A., successor by merger to LaSalle
 9 Bank National Association, as Trustee for First Franklin Mortgage Loan Trust, Mortgage Loan
 10 Asset-Backed Certificates, Series 2007-FF1, assigned all of its right, title and interest in the Deed
 11 of Trust to U.S. Bank, National Association, as successor Trustee to Bank of America, N.A., as
 12 Successor by merger to LaSalle Bank, N.A., as Trustee for the Holders of the First Franklin
 13 Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FF1.⁴

14 **18.** On August 30, 2011, U.S. Bank, National Association, as successor Trustee to
 15 Bank of America, N.A., as Successor by merger to LaSalle Bank, N.A., as Trustee for the
 16 Holders of the First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates,
 17 Series 2007-FF1, assigned all of its right, title and interest in the Deed of Trust to LaSalle Bank,
 18 N.A., as Trustee for the Holders of the *Merrill Lynch* First Franklin Mortgage Loan Trust,
 19 Mortgage Loan Asset-Backed Certificates, Series 2007-FF1.⁵

20 **19.** On October 7, 2013, MERS, Inc., as nominee for First Franklin, a Division of
 21 National City Bank and its successors and assigns, assigned all of its right, title and interest in
 22 the Deed of Trust to U.S. Bank National Association, as trustee, in trust for registered holders of
 23 _____

24 ² A true and correct copy of the Deed of Trust recorded as Book and Instrument Number
 3469202 is attached to Plaintiff's Complaint as **Exhibit 2**.

25 ³ A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument
 Number 3725541 is attached to Plaintiff's Complaint as **Exhibit 3**.

26 ⁴ A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument
 Number 3953205 is attached to Plaintiff's Complaint as **Exhibit 4**.

27 ⁵ A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument
 28 Number 4035941 is attached to Plaintiff's Complaint as **Exhibit 5**.

1 First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-
2 FF1.⁶

3 **20.** On June 29, 2010, a Notice of Delinquent Assessment Lien was recorded by
4 Alessi on behalf of D'Andrea HOA.⁷

5 **21.** On October 13, 2010, a Notice of Default and Election to Sell Under
6 Homeowners Association Lien was recorded by Alessi on behalf of D'Andrea HOA against the
7 Property.⁸

8 **22.** On March 13, 2013, a Notice of Trustee's Sale was recorded against the Property
9 by Alessi on behalf of D'Andrea HOA.⁹

10 **23.** On April 2, 2013, Bank of America, N.A. (hereinafter, "BANA"), the prior
11 beneficiary and servicer, through prior counsel, Miles Bauer Bergstrom & Winters, LLP
12 (hereinafter, "MBBW"), requested a current HOA lien payoff demand and account ledger from
13 Alessi.¹⁰

14 **24.** On April 11, 2013, MBBW received a payoff demand from Alessi (the "Payoff
15 Demand"), which did not include a statement of the super priority lien amount.¹¹

16 **25.** The Payoff Demand included a breakdown of past due assessments, fees, costs
17 and an account ledger from D'Andrea HOA showing that the monthly assessment was \$32.00.

18 **26.** The Payoff Demand showed the total assessments due to be \$1,724.00, nearly
19 four and a half years' worth of assessments, however the total amount demanded by the Alessi to
20

21 ⁶ A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument
22 Number 4287157 is attached to Plaintiff's Complaint as **Exhibit 6**.

23 ⁷ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and
24 Instrument Number 3896309 is attached to Plaintiff's Complaint as **Exhibit 7**.

25 ⁸ A true and correct copy of the Notice of Default and Election to Sell Under Homeowners
26 Association Lien recorded as Book and Instrument Number 3932339 is attached to Plaintiff's
27 Complaint as **Exhibit 8**.

28 ⁹ A true and correct copy of the Notice of Trustee's Sale recorded as Book and Instrument
Number 4214672 is attached to Plaintiff's Complaint as **Exhibit 9**.

¹⁰ A true and correct copy of a letter dated April 2, 2013 from MBBW to Alessi is attached to
Plaintiff's Complaint as **Exhibit 10**.

¹¹ A true and correct copy of the Payoff Demand dated April 11, 2013 from Alessi is attached
here to Plaintiff's Complaint as **Exhibit 11**.

1 prevent the foreclosure sale was three times this amount at \$5,812.49.

2 **27.** Based on the account ledger provided by Alessi, MBBW determined that the
3 super priority lien, which would be equal to nine (9) months' worth of assessments, was \$288.00.

4 **28.** On April 18, 2013, MBBW on behalf of BANA, tendered super priority lien
5 payoff in the amount of \$288.00 to Alessi.¹²

6 **29.** On April 19, 2013, Alessi acknowledged and confirmed receipt of the letter and
7 super priority payoff check.¹³

8 **30.** MBBW records indicate that the super lien payoff was rejected by Alessi on or
9 about May 3, 2013.¹⁴

10 **31.** On June 14, 2013 a Trustee's Deed Upon Sale was recorded, wherein SFR
11 Investments Pool 1, LLC was stated as the grantee and allegedly paid \$9,000.00 at a sale held by
12 Alessi on behalf of D'Andrea HOA.¹⁵

13 **32.** Upon information and belief, pursuant to that Trustee's Deed Upon Sale, a non-
14 judicial foreclosure sale occurred on June 6, 2013 (hereinafter the "HOA Sale"), whereby SFR
15 acquired its interest in the Property, if any, for \$9,000.00.

16 **33.** On September 4, 2014, a Notice of Delinquent Assessment Lien was recorded
17 against the Property by Clarkson on behalf of Siena HOA.¹⁶

18 **34.** On March 18, 2015, Plaintiff's counsel requested a statement of the super priority
19 portion of the Siena HOA lien from Clarkson.

20 **35.** On March 25, 2015, Clarkson provided a payoff demand which specifically stated
21

22
23 ¹² A true and correct copy of a letter dated April 18, 2013 to Alessi and a check in the amount of
24 \$288.00 are attached to Plaintiff's Complaint as **Exhibit 12**.

25 ¹³ A true and correct copy of the Acknowledgment signed by an employee of Alessi is attached to
26 Plaintiff's Complaint as **Exhibit 13**.

27 ¹⁴ A true and correct copy of the screenshot of records belonging to Miles Bauer Bergstrom and
28 Winters is attached to Plaintiff's Complaint as **Exhibit 14**.

¹⁵ A true and correct copy of the Trustee's Deed Upon Sale recorded as Book and Instrument
Number 4247602 is attached to Plaintiff's Complaint as **Exhibit 15**.

¹⁶ A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and
Instrument Number 4389188 is attached to Plaintiff's Complaint as **Exhibit 16**.

1 that it would not accept funds for the payment of the super priority lien.¹⁷

2 **36.** A homeowner's association sale conducted pursuant to NRS Chapter 116 must
3 comply with all notice provisions as stated in NRS 116.31162 through NRS 116.31168 and NRS
4 107.090.

5 **37.** A lender or holder, such as Plaintiff, has a right to cure a delinquent homeowner's
6 association lien in order to protect its interest.

7 **38.** Upon information and belief, D'Andrea HOA and its agent, Alessi, did not
8 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS
9 116.31168.

10 **39.** A recorded notice of default must "describe the deficiency in payment."

11 **40.** The D'Andrea HOA assessment lien and foreclosure notices included improper
12 fees and costs in amount demanded.

13 **41.** The HOA Sale occurred without notice to Plaintiff, or its predecessors, agents,
14 servicers or trustees, as to what proportion or whether any amount of the D'Andrea HOA lien
15 included a super-priority amount.

16 **42.** The HOA Sale occurred without notice to Plaintiff, or its predecessors, agents,
17 servicers or trustees, whether D'Andrea HOA was foreclosing on the "super-priority" portion of
18 its lien, if any, or under the non-super-priority portion of the lien.

19 **43.** The HOA Sale occurred without notice to Plaintiff, or its predecessors, agents,
20 servicers or trustees, of a right to cure the delinquent assessments and the super-priority lien, if
21 any.

22 **44.** The HOA Sale occurred despite the attempt by Plaintiff, or its predecessors,
23 agents, servicers or trustees' attempt to satisfy the super-priority lien.

24 **45.** The HOA Sale violated Plaintiff's rights to due process because it was not given
25 proper, adequate notice and the opportunity to cure the deficiency or default in the payment of
26 the HOA's assessments and the super-priority lien, if any.

27 ¹⁷ A true and correct copy of the Siena HOA/Clarkson Payoff Demand dated March 25, 2015 is
28 attached to Plaintiff's Complaint as **Exhibit 17**.

1 **46.** The HOA Sale was an invalid sale and could not have extinguished Plaintiff's
2 secured interest because of defects in the notices given to Plaintiff, or its predecessors, agents,
3 servicers or trustees, if any.

4 **47.** Under NRS Chapter 116, a lien under NRS 116.3116(1) can only include costs
5 and fees that are specifically enumerated in the statute.

6 **48.** A homeowner's association may only collect as a part of the super priority lien (a)
7 nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b)
8 nine months of common assessments which became due prior to the institution of an action to
9 enforce the lien (unless Fannie Mae and Freddie Mac regulations require a shorter period of not
10 less than six months).

11 **49.** Upon information and belief, the HOA Foreclosure Notices included improper
12 fees and costs in the amount demanded.

13 **50.** The attorney's fees and the costs of collecting on a homeowner's association lien
14 cannot be included in the super-priority lien.

15 **51.** Upon information and belief, the HOA assessment lien and foreclosure notices
16 included fines, interest, late fees, dues, attorney's fees, and costs of collection that are not
17 properly included in a super-priority lien under Nevada law and that are not permissible under
18 NRS 116.3102 et seq.

19 **52.** The HOA Sale is unlawful and void under NRS 116.3102 et seq.

20 **53.** The HOA Sale deprived Plaintiff of its right to due process because the
21 foreclosure notices failed to identify the super-priority amount, to adequately describe the
22 deficiency in payment, to provide Plaintiff notice of the correct super-priority amount, and to
23 provide a reasonable opportunity to satisfy that amount.

24 **54.** A homeowner's association sale must be done in a commercially reasonable
25 manner.

26 **55.** At the time of the HOA Sale, the amount owed on the Rheaume Loan exceeded
27 \$235,165.00.

28 **56.** Upon information and belief, at the time of the HOA Sale, the fair market value of

1 the Property exceeded \$136,328.00.

2 **57.** The amount paid at the HOA Sale allegedly totaled \$9,000.00.

3 **58.** The HOA Sale was invalid because it was commercially unreasonable.

4 **59.** The HOA Sale by which SFR took its interest, if any, was commercially
5 unreasonable if it extinguished Plaintiff's Deed of Trust.

6 **60.** The sales price to D'Andrea HOA, when compared to the outstanding balance of
7 Plaintiff's Note and Deed of Trust and the fair market value of the Property, demonstrates that
8 the HOA Sale was an invalid sale and could not have extinguished Plaintiff's secured interest
9 because it was not a commercially reasonable sale.

10 **61.** Without providing Plaintiff, or its predecessors, agents, servicers or trustees,
11 notice of the correct super-priority amount and a reasonable opportunity to satisfy that amount,
12 including its failure to identify the super-priority amount and its failure to adequately describe
13 the deficiency in payment as required by Nevada law, the HOA Sale is commercially
14 unreasonable and deprived Plaintiff of its right to due process.

15 **62.** The CC&Rs for the D'Andrea HOA provide in section 14.01 **Assessment Lien**
16 **Subordinated** states, "Any lien created or claimed under the provisions of Section 4.10 above,
17 *shall be subject to and subordinate to the lien of any first Mortgage* given in good faith and for
18 value. *No lien* created under the provisions of Section 4.10, above, *shall in any way defeat,*
19 *invalidate or impair the rights of any Mortgagee under any such recorded Mortgage,*" such
20 that Plaintiff's Deed of Trust encumbers the Property, even in the event the D'Andrea HOA
21 conducts a sale pursuant to NRS 116.3116 et seq.¹⁸

22 **63.** Because the CC&Rs contained a Mortgagee Protection Clause, and because
23 Plaintiff, or its predecessors, agents, servicers or trustees, were not given proper notice that the
24 HOA intended to foreclose on the super-priority portion of the dues owing, Plaintiff did not
25

26 ¹⁸ A true and correct copy of the Declaration of Covenants, Conditions and Restrictions for
27 D'Andrea HOA, recorded on May 25, 1999, in the Official Records of Washoe County as Book
28 5712, Page 0494 and Instrument Number 2348877, is attached to Plaintiff's Complaint as
Exhibit 18.

1 know that it had to attend the HOA Sale to protect its security interest.

2 **64.** Because the CC&Rs contained a Mortgagee Protection Clause, and because
3 proper notice that the HOA intended to foreclose on the super-priority portion of the dues owing
4 was not given, prospective bidders did not appear for the HOA Sale, making the HOA Sale
5 commercially unreasonable.

6 **65.** Defendants knew that Plaintiff would rely on the Mortgagee Protection Clause
7 contained in the CC&Rs which are of public record, and knew that Plaintiff would not know that
8 the HOA was foreclosing on super-priority amounts because of the failure of D'Andrea HOA
9 and Alessi to provide such notice. Plaintiff's absence from the HOA Sale allowed SFR to appear
10 at the HOA Sale and purchase the Property for a fraction of market value, making the HOA Sale
11 commercially unreasonable.

12 **66.** Defendants knew that prospective bidders would less be likely to attend the HOA
13 Sale because the public at large believed that Plaintiff was protected under the Mortgagee
14 Protection Clause in the CC&Rs of public record, and that the public at large did not receive
15 notice, constructive or actual, that D'Andrea HOA was foreclosing on a super-priority portion of
16 its lien because D'Andrea HOA improperly failed to provide such notice. The general public's
17 belief therefore was that the buyer at the HOA Sale would take title to the Property subject to
18 Plaintiff's Deed of Trust. This general belief resulted in the absence of prospective bidders at the
19 HOA Sale, which allowed SFR to appear at the HOA Sale and purchase the Property for a
20 fraction of market value, making the HOA Sale commercially unreasonable.

21 **67.** The circumstances of the HOA Sale of the Property breached D'Andrea HOA's
22 and Alessi's obligation of good faith under NRS 116.1113 and their duty to act in a
23 commercially reasonable manner.

24 **68.** The circumstances of the HOA Sale of the Property and the status as a
25 professional property purchaser prevent SFR from being deemed a bona fide purchaser for value.

26 **69.** Upon information and belief, SFR had actual, constructive or inquiry notice of
27 Plaintiff's first Deed of Trust, which prevents SFR from being deemed a bona fide purchaser for
28 value.

1 70. In the event Plaintiff's interest in the Property is not reaffirmed or restored,
2 Plaintiff suffered damages in the amount of the fair market value of the Property or the unpaid
3 balance of the Rheaume Loan and Deed of Trust, at the time of the HOA Sale, whichever is
4 greater, as a proximate result of Defendants' acts and omissions.

5 **FIRST CAUSE OF ACTION**

6 **(Quiet Title/Declaratory Relief Pursuant to 28 U.S.C. § 2201, NRS 30.010 et seq. and NRS**
7 **40.010 et seq. versus SFR, D'Andrea HOA and Siena HOA)**

8 71. Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth
9 herein.

10 72. Pursuant to 28 U.S.C. § 2201, NRS 30.010 et seq. and NRS 40.010, this Court
11 has the power and authority to declare Plaintiff's rights and interests in the Property and to
12 resolve Defendants' adverse claims in the Property.

13 73. Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to
14 declare the rights and interest of the parties following the acts and omissions of D'Andrea HOA
15 and Alessi in foreclosing the Property.

16 74. Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to
17 declare the rights and interest of the parties regarding the Siena HOA's, and its agent Clarkson's,
18 actions in refusing to provide a super priority lien payoff in regard to the Siena HOA lien against
19 the Property and pursuing foreclosure of Siena HOA's lien against the Property.

20 75. Plaintiff's Deed of Trust is a first secured interest on the Property as intended by
21 and whose priority is protected by NRS 116.3116(2)(b).

22 76. As the current beneficiary under the Deed of Trust and Rheaume Loan, Plaintiff's
23 interest still encumbers the Property and retains its first position status in the chain of title and is
24 superior to the interest, if any, acquired by SFR, or held or claimed by any other party.

25 77. Upon information and belief, Defendant SFR claims an interest in the Property
26 through a Trustee's Deed Upon Sale recorded in the Clark County Recorder's Office as Book
27 and Instrument Number 4247602, which is adverse to the Plaintiff's interest.

28 78. Upon information and belief, D'Andrea HOA, and its agent, Alessi, did not

1 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS
2 116.31168.

3 **79.** The CC&Rs for D'Andrea HOA provided for the subordination of its Lien to
4 Plaintiff's Deed of Trust such that Plaintiff's Deed of Trust encumbers the Property, even in the
5 event the HOA conducts a sale pursuant to NRS 116.3116 et seq.

6 **80.** Without providing Plaintiff notice of the correct super-priority amount and a
7 reasonable opportunity to satisfy that amount, including its failure to identify the super-priority
8 amount and its failure to adequately describe the deficiency in payment as required by Nevada
9 statutes, the CC&Rs, and due process to Plaintiff and/or its predecessors, and therefore the HOA
10 Sale is void and should be set aside or rescinded because it was commercially unreasonable and
11 deprived Plaintiff of its right to due process.

12 **81.** Based on the adverse claims being asserted by the parties, Plaintiff is entitled to a
13 judicial determination regarding the rights and interests of the respective parties to the case.

14 **82.** For all the reasons set forth above and in the Factual Background, Plaintiff is
15 entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201, NRS 30.010 et seq.
16 and NRS 40.010, the HOA Sale is unlawful and void under NRS 116.3102 et seq.

17 **83.** Plaintiff is entitled to a determination from this Court, pursuant to Pursuant to 28
18 U.S.C. § 2201, NRS 30.010 et seq. and NRS 40.010, that Plaintiff is the beneficiary of a first
19 position Deed of Trust which still encumbers the Property and is superior to the interest held by
20 SFR and all other parties, if any.

21 **84.** Plaintiff is also entitled to a determination from this Court, pursuant to pursuant to
22 28 U.S.C. § 2201, NRS 30.010 et seq. and NRS 40.010, that the pending foreclosure by Siena
23 HOA and Clarkson is unlawful and void because a statement of the super priority amount and a
24 reasonable opportunity to cure has not been provided to Plaintiff.

25 **85.** In the alternative, if it is found under state law that Plaintiff's interest could have
26 been extinguished by the HOA Sale, for all the reasons set forth above and in the Factual
27 Background, Plaintiff is entitled to a determination from this Court, pursuant to NRS 40.010,
28 NRS 30.010 et seq. and 28 U.S.C. § 2201, that the HOA Sale was unlawful and void and

1 conveyed no legitimate interest to SFR.

2 **86.** Plaintiff has furthermore been required to retain counsel and is entitled to recover
3 reasonable attorney's fees for having brought the underlying action.

4 **SECOND CAUSE OF ACTION**

5 **(Preliminary Injunction versus SFR, Siena HOA and Clarkson)**

6 **87.** Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth
7 herein.

8 **88.** As set forth above, Defendants may claim an ownership interest in the Property
9 that is adverse to Plaintiff.

10 **89.** Any sale, transfer or encumbrance of the Property, prior to a judicial
11 determination concerning the respective rights and interests of the parties to the case, would be
12 invalid because Plaintiff's Deed of Trust still encumbers the Property in first position and was
13 not extinguished by the HOA Sale.

14 **90.** Plaintiff has a reasonable probability of success on the merits of the Complaint,
15 for which compensatory damages will not compensate Plaintiff for the irreparable harm of the
16 loss of title to a bona fide purchaser or loss of the first position priority status secured by the
17 Property.

18 **91.** Plaintiff has no adequate remedy at law due to the uniqueness of the Property
19 involved in the case.

20 **92.** Plaintiff is entitled to a preliminary injunction prohibiting Defendants from
21 conducting any sale, transfer or encumbrance of the Property if it is claimed to be superior to
22 Plaintiff's Deed of Trust or not subject to that Deed of Trust.

23 **93.** Plaintiff is entitled to a preliminary injunction requiring SFR to pay all taxes,
24 insurance and homeowner's association dues during the pendency of this action.

25 **94.** Plaintiff is entitled to a preliminary injunction requiring SFR to segregate and
26 deposit all rents with the Court or a Court-approved trust account over which SFR has no control
27 during the pendency of this action.

28 **95.** Plaintiff has been required to retain counsel to prosecute this action and is entitled

1 to recover reasonable attorney's fees to prosecute this action.

2 **THIRD CAUSE OF ACTION**

3 **(Wrongful Foreclosure versus D'Andrea HOA and Alessi)**

4 **96.** Plaintiff incorporates by reference the allegations of all previous paragraphs, as if
5 fully set forth herein.

6 **97.** Upon information and belief, D'Andrea HOA and Alessi did not comply with all
7 mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168.

8 **98.** D'Andrea HOA and Alessi failed to provide notice pursuant to the CC&Rs.

9 **99.** Because the HOA Sale was wrongfully conducted and violated applicable law, the
10 Court should set it aside to the extent that it purports to have extinguished Plaintiff's first Deed
11 of Trust and delivered free and clear title to the Property to SFR.

12 **100.** Because the HOA Sale was not commercially reasonable, it was invalid, wrongful
13 and should be set aside.

14 **101.** Because D'Andrea HOA and Alessi did not give Plaintiff, or its agents, servicers
15 or predecessors in interest, the proper, adequate notice and the opportunity to cure the deficiency
16 or default in the payment of D'Andrea HOA's assessments required by Nevada statutes, the
17 CC&R's and due process, the HOA Sale was wrongfully conducted and should be set aside.

18 **102.** As a proximate result of D'Andrea HOA and Alessi's wrongful foreclosure of the
19 Property by the HOA Sale, as more particularly set forth above and in the Factual Background,
20 Plaintiff has suffered general and special damages in an amount not presently known. Plaintiff
21 will seek leave of court to assert said amounts when they are determined.

22 **103.** If it is determined that Plaintiff's Deed of Trust has been extinguished by the
23 HOA Sale, as a proximate result of D'Andrea HOA and Alessi's wrongful foreclosure of the
24 Property by the HOA Sale, Plaintiff has suffered special damages in the amount equal to the fair
25 market value of the Property or the unpaid balance of the Rheaume Loan, plus interest, at the
26 time of the HOA Sale, whichever is greater.

27 **104.** Plaintiff has been required to retain counsel to prosecute this action and is entitled
28 to recover reasonable attorney's fees to prosecute this action.

FOURTH CAUSE OF ACTION

(Negligence versus D'Andrea HOA and Alessi)

105. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

106. D'Andrea HOA and Alessi owed a duty to Plaintiff and other subordinate lienholders to conduct the HOA foreclosure sale at issue in this case properly and in a manner that would fairly allow them an opportunity to protect their interest and cure the super-priority lien threatening their security interests.

107. D'Andrea HOA and Alessi breached their duty by failing to disclose the amount of the super-priority lien, by failing to specify that it was foreclosing on the super-priority portion of its lien as opposed to the non-super-priority portion, and by failing to provide notice that Plaintiff and other subordinate lienholders had an opportunity to cure.

108. As a proximate result of D'Andrea HOA's and Alessi's breaches of their duties, Plaintiff was unable to cure by tendering a pay-off of the super-priority lien threatening its security interest.

109. As a proximate result of D'Andrea HOA's and Alessi's breaches of their duties, Plaintiff has incurred general and special damages.

110. If Plaintiff is found to have lost its first secured interest in the Property, it was the proximate result of D'Andrea HOA's and Alessi's breach of their duties, and Plaintiff have thereby suffered general and special damages.

111. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

FIFTH CAUSE OF ACTION

(Negligence Per Se versus D'Andrea HOA and the Alessi)

112. Plaintiff incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

113. NRS Chapter 116 imposes a duty on HOAs to conduct HOA foreclosure sales in a manner that is consistent with its provisions.

1 **126.** Plaintiff has been required to retain counsel to prosecute this action and is entitled
2 to recover reasonable attorney's fees to prosecute this action.

3 **SEVENTH CAUSE OF ACTION**

4 **(Misrepresentation versus D'Andrea HOA)**

5 **127.** Plaintiff incorporates by reference the allegations of all previous paragraphs, as if
6 fully set forth herein.

7 **128.** Plaintiff is within the class or persons or entities D'Andrea HOA intended or had
8 reason to expect to act or to refrain from action in reliance upon the provisions of the CC&Rs,
9 including without limitation, the Mortgagee Protection Clause.

10 **129.** Plaintiff, and its predecessors in interest, justifiably relied upon the provisions of
11 the CC&Rs and NRS 116.3116(2)(b) in giving consideration for the Deed of Trust, and the
12 Rheume Loan it secures, and the HOA intended or had reason to expect their conduct would be
13 influenced.

14 **130.** D'Andrea HOA's representations in the provisions of the CC&Rs, including
15 without limitation, the Mortgagee Protection Clause, were false.

16 **131.** D'Andrea HOA had knowledge or a belief that the representations in the
17 provisions of the CC&Rs, including without limitation, the Mortgagee Protection Clause, were
18 false or it had an insufficient basis for making the representations.

19 **132.** D'Andrea HOA had a pecuniary interest in having Plaintiff and its predecessors in
20 interest rely on the provisions of the CC&Rs, including without limitation, the Mortgagee
21 Protection Clause.

22 **133.** D'Andrea HOA failed to exercise reasonable care or competence in
23 communicating the information within the provisions of the CC&Rs, including without
24 limitation, the Mortgagee Protection Clause, which was false or it had an insufficient basis for
25 making.

26 **134.** D'Andrea HOA, or its agent, Alessi, acted in contravention to the provisions of
27 the CC&Rs, including without limitation, the Mortgagee Protection Clause, when it conducted
28 the HOA Sale in a manner that could extinguish Plaintiff's Deed of Trust.

135. Plaintiff suffered general and special damages as a proximate result of its reliance.

136. Plaintiff has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

EIGHTH CAUSE OF ACTION

(Unjust Enrichment versus SFR, D'Andrea HOA and Alessi)

137. Plaintiff incorporates and re-alleges all previous paragraphs, as if fully set forth herein.

138. Plaintiff has been deprived of the benefit of its secured deed of trust by the actions of the Defendants.

139. Defendants have benefitted from the unlawful HOA Sale and nature of the real property.

140. Defendants have benefitted from Plaintiff's payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

141. Should Plaintiff's Complaint be successful in quieting title against Defendants and setting aside the HOA Sale, Defendants will have been unjustly enriched by the HOA Sale and usage of the Property.

142. Plaintiff will have suffered damages if Defendants are allowed to retain their interests in the Property and the funds received from the HOA Sale.

143. Plaintiff will have suffered damages if Defendants are allowed to retain their interests in the Property and Plaintiff's payment of taxes, insurance or homeowner's association assessments since the time of the HOA Sale.

144. Plaintiff is entitled to general and special damages in excess of \$10,000.00.

145. Plaintiff has furthermore been required to retain counsel and is entitled to recover reasonable attorney's fees for having brought the underlying action.

146. Plaintiff is entitled to a determination from this Court, pursuant to 28 U.S.C. § 2201, NRS 30.010 et seq. and NRS 40.010, that its secured interest by virtue of its Deed of Trust is superior to the interest, if any, acquired by SFR through the Foreclosure Deed, or held or claimed by any other party.

1 **147.** Plaintiff has been required to retain counsel to prosecute this action and is entitled
2 to recover reasonable attorney's fees to prosecute this action.

3 **NINTH CAUSE OF ACTION**
4 **(Breach of the Covenant of Good Faith and Fair Dealing versus**
5 **D'Andrea HOA and Alessi)**

6 **148.** Plaintiff incorporates by reference the allegations of all previous paragraphs, as if
7 fully set forth herein.

8 **149.** Implicit in every contract in the state of Nevada is an implied covenant of good
9 faith and fair dealing.

10 **150.** Plaintiff was an intended beneficiary of the HOA's CC&Rs.

11 **151.** D'Andrea HOA and Alessi breached the duties, obligations, promises, covenants
12 and conditions, express and implied, in the CC&Rs owed to Plaintiff by the circumstances under
13 which they conducted the HOA Sale of the Property.

14 **152.** D'Andrea HOA and Alessi took affirmative action to re-convey the Property a
15 third party, in direct contravention of D'Andrea HOA's duties to Plaintiff as promised in the
16 CC&Rs.

17 **153.** D'Andrea HOA's and Alessi's breaches of the obligations, promises, covenants
18 and conditions of the CC&Rs, and to act in good faith regarding same, proximately caused
19 Plaintiff general and special damages in an amount in excess of \$10,000.00.

20 **154.** Plaintiff has been required to retain counsel to prosecute this action and is entitled
21 to recover reasonable attorney's fees to prosecute this action.

22 **PRAYER**

23 Wherefore, Plaintiff prays for judgment against the Defendants, jointly and severally, as
24 follows:

- 25 1. For a declaration and determination that the HOA Sale was invalid to the extent it
26 purports to convey the Property free and clear to SFR;
- 27 2. For a declaration and determination that Plaintiff's interest still encumbers the
28 Property, and that Plaintiff's first Deed of Trust was not extinguished by the HOA
Sale;

- 1 3. For a declaration and determination that Plaintiff's interest is superior to the
- 2 interest of SFR and all other parties;
- 3 4. In the alternative, for a declaration and determination that the HOA Sale was
- 4 invalid and conveyed no legitimate interest to SFR;
- 5 5. For a preliminary injunction that SFR, Siena HOA and Clarkson and their
- 6 successors, assigns, and agents are prohibited from conducting any sale, transfer
- 7 or encumbrance of the Property that is claimed to be superior to Plaintiff's Deed
- 8 of Trust or not subject to that Deed of Trust;
- 9 6. For a preliminary injunction that SFR, its successors, assigns, and agents be
- 10 required to pay all taxes, insurance and homeowner's association dues during the
- 11 pendency of this action.
- 12 7. For a preliminary injunction that SFR, its successors, assigns, and agents be
- 13 required to segregate and deposit all rents with the Court or a Court-approved
- 14 trust account over which SFR has no control during the pendency of this action;

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- DATED this 29th day of April, 2015.

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